

# LCI International®

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FEDERAL COMMUNICATIONS COMMISSION  
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April 28, 1992

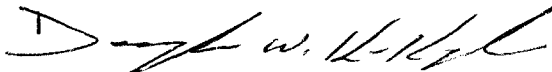
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 200554

RE: OC Docket No. 92-13

Enclosed please find an original and five (5) copies of LCI International's reply comments in the above mentioned docket. Additional copies have been filed with the Common Carrier Bureau, and the information office pursuant to Section 1.419 of the Code of Federal Regulations.

Acknowledgment and date of receipt of this letter are request. A duplicate letter is attached for this purpose.

Sincerely,



Douglas W. Kinkoph  
Manager  
Regulatory Affairs

Enclosure

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**Worldwide Telecommunications**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FCC MAIL BRANCH

In the Matter of )  
 )  
Tariff Filing Requirements for ) CC Docket No. 92-13  
Interstate Common Carriers )  
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REPLY COMMENTS COMMENTS OF LCI INTERNATIONAL

Federal Communications Commission  
Office of the Secretary

I. INTRODUCTION AND SUMMARY

LCI International ("LCI") hereby files these reply comments in response to the Federal Communications Commission (Commission) Notice of Proposed Rulemaking (FCC 92-13) released by the Commission in the above-captioned proceeding on January 28, 1992 [hereinafter "Further Notice"]. In its Further Notice the Commission requested comments on the lawfulness of its forbearance policy. LCI stated in its initial comments that the plain and clear language of Section 203 (b)(2) as well as Section 203(c) and 4(i) does provide the Commission with the authority to carry out its forbearance policy. The following sets forth LCI's reply comments to the initial comments of AT&T.

## II. AT&T'S COMPLAINT

AT&T argues that the Commission erred by inviting comments on the legality of the Commission's forbearance policy. AT&T claims that no "policy" issue exists because "there manifestly is no question of statutory authority on which public comment could be material, and no "policy" issue for the Commission to address." It appears that AT&T would prefer that the Commission and nondominant carriers allow the legality of the Commission's forbearance policy to be determined solely upon the biased position of AT&T. In light of AT&T's complaint against MCI, as well as the potential impact on the long-distance industry, the Commission was correct in calling for comments on the legality of its forbearance policy. However, as stated by LCI in its initial comments and by MCI and CompTel<sup>1</sup>, the Commission has authority under the Communications Act to carry out its forbearance policy.

AT&T states that the Commission has no authority to relieve Common Carriers from the mandatory provision of Section 203 and cites Section 203(a) and 203(c) in support. AT&T, however, failed to present the first part of Section 203 (c) which states "No carrier, unless otherwise provided by or

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<sup>1</sup>/ Initial Comments of MCI and CompTel, Docket 92-13.

under authority of this Act, shall engage or participate in such communications unless schedules have been filed and published in accordance with the provision of this Act and with the regulations made thereunder...(emphasis added)." This first part of Section 203 (c) clearly establishes that the requirement that carriers must file tariffs with the Commission is a conditional requirement. It is conditional because Sections 203(b)(2) and 4(i) of the Act permit the Commission to modify the requirements set forth under Section 203(c) in addition to other requirements of the Act. AT&T goes on to state that the D.C. Circuit court in MCI v. FCC held that "the Commission lacks authority to prohibit MCI and similarly situated common carriers from filing tariffs that, by statute, every common carrier shall file."<sup>2</sup> AT&T has improperly attempted to apply the D.C. Circuit Court's opinion on the Commission's policy that prohibited nondominant carriers from filing tariffs, to the Commission's current forbearance policy which only modifies Section 203(a). The forbearance policy is in no way a wholesale abandonment of the Communications Act. The forbearance policy has only eliminated the entry and exit requirements of Section 214 and the tariff requirements set forth in Section 203 which are

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2/ MCI V. FCC, 765 Federal Reporter, 2d Series, p.1186.

clearly modifications permitted by the Communications Act and D.C. Circuit Court.<sup>3</sup> AT&T has also conveniently failed to point out with regards to 203(b)(2) that Congress explicitly included an exception to that subsection. Congress included language in Section 203(b)(2) that prohibits the Commission from changing the notice period for a change in filling to more than 90 days. Congress' action clearly indicates its intention to allow the Commission the authority to make all other changes as would be necessary to carry out its duties under the Communications Act.

III. Maislin Industries, U.S. v Primary Steel, Inc.

Virtually AT&T's entire argument that forbearance is illegal has been built around the Maislin case. AT&T argues that the Maislin case "underscores the unlawfulness of forbearance." The Court stated in the Maislin case that offering service only pursuant to filed rates was "utterly central" to the administration of the Act and could not be modified by the Interstate Commerce Commission. The Court went on to say that "without these provisions.. it would be monumentally difficult .. and virtually impossible to enforce the requirement that rates be reasonable and nondiscriminatory". The situation surrounding the transportation industry at the time of the

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<sup>3</sup>/ MCI V. FCC, 765 Federal Reporter, 2d Series, pp1191-1192.

Maislin ruling was fundamentally different from that of the telecommunications industry. What was central to the Court's finding in the Maislin case was that without tariffs the ICC was unable to carry out its duty to ensure just and reasonable rates. However, in the telecommunications industry just and reasonable rates are assured via the regulation of the dominant carrier's rates, which in this case is AT&T. The Commission clearly determined in its Competitive Carrier Rulemaking Proceeding that nondominant common carriers lacked market power. The Commission stated that "A competitive firm, lacking market power, must take the market price as given, because if it raises price it will face an unacceptable loss of business, and if it lowers price it will face unrecoverable monetary losses in an attempt to supply the market demand at that price."<sup>4</sup> The Commission's forbearance policy allows it to carry out its statutory duties to ensure that rates are just and reasonable. The facts surrounding the Maislin case were so fundamentally different from those relating to the Commission's forbearance policy that the Court's findings in Maislin cannot be applied to this proceeding.

#### IV. NONDOMINANT TARIFF FILING REQUIREMENTS

AT&T states that "No carrier more than AT&T supports the maximum possible streamlining or withdrawal of regulation in

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<sup>4</sup>/ Notice of Proposed Rulemaking, 90-132.

today's competitive interexchange market, or realizes the enormous additional costs unnecessary regulation imposes on carriers and their customers."<sup>5</sup> LCI will not argue that AT&T supports the maximum possible streamlining of the regulation to which it is subject. However, it is clear from AT&T's actions that AT&T's overall concern is not for that of the industry or consumer, but that of better positioning itself to increase its share of the long-distance market. AT&T argues that "The Commission's attention in this regard should be focused on reducing the considerably more burdensome rules to which AT&T's non-streamlined services remain subject."<sup>6</sup> It is clear from such statements that AT&T is utilizing its attack on the Commission's forbearance policy as a means to further deregulate itself while possibly increasing the amount of regulation for nondominant carriers. LCI believes that the Commission's recent pace of deregulating AT&T has proceeded much too rapidly. AT&T currently holds approximately 65% of the long-distance market, while MCI and US Sprint control only 16% and 10% respectively. AT&T itself believes it has stopped additional erosion of its market share. AT&T says "Based on estimated industry data, we stabilized our share of the total domestic market in 1991 and made progress in stabilizing our share of the international market."<sup>7</sup> AT&T

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5/ Initial Comments, AT&T, Docket 92-13, p.8.

6/ Ibid. p9.

7/ AT&T 1991 Annual Report, p12.

is clearly still the dominant long-distance carriers with 1991 telecommunication service revenues of 38.8 billion dollars.

"AT&T long distance services 7 out of 10 public payphones, 19 out of the 20 top lodging chains, and 20 of the 25 largest airports in the U.S." <sup>8</sup> Therefore, additional streamlining of AT&T's regulation is not justified.

#### V. RE-REGULATION OF AT&T

LCI supports MCI's position that "if the Commission determines that it does not have the authority to continue with its forbearance policy and must "re-regulate" them, it is essential that it undertake to reimpose an appropriate level of additional regulation on AT&T."<sup>9</sup> The Commission has clearly established in its Competitive Carrier Proceeding that the dominant position of AT&T requires regulation that is substantially greater than that imposed upon nondominant carriers. AT&T's continuing position as the dominant carrier in the long-distance market requires that the Commission continue to apply substantially greater regulation upon the operations of AT&T.

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<sup>8</sup>/ AT&T 1991 Annual Report, pl2.

<sup>9</sup>/ Initial Comments of MCI, 92-13,p54.

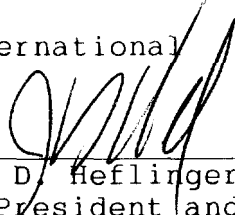


VI. CONCLUSION

AT&T has failed to provide any basis for overturning the Commission's forbearance policy. In support of its position AT&T has cited Sections 203(a), 203(b)(2) and 203(c) of the Communications Act as well as Maislin Industries, U.S. V. Primary Steel. However, while AT&T has cited these various sections of the Communications Act it has carefully tiptoed around portions of the Act that result in just the opposite conclusion. LCI has shown that Section 203(b)(2) and 203(c) permit the Commission to carry out its forbearance policy. The Court's findings in the Maislin case with regards to the filing of tariffs cannot be applied to the Commission's current forbearance policy. Unlike the ICC, the Commission is carrying out its statutory duty of ensuring just and reasonable rates. AT&T has provide the Commission with no basis upon which it should consider overturning its current forbearance policy. LCI urges the Commission to conclude this Rulemaking by finding that its forbearance policy is authorized pursuant to the Communications Act.


LCI International

By



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Vice President and General Counsel  
LCI International  
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Dublin, Ohio 43017

I, Douglas W. Kinkoph, do hereby certify that on this 28th day of April, 1992, copies of the foregoing "Reply Comments of LiTel Telecommunications Corporation" in CC Docket No. 92-13 were served by first-class mail, postage prepaid, upon the parties on the attached list.

  
Douglas W. Kinkoph

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